

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7616 of 1998

with

Spl. C.A. Nos. 7617/98, 7618/98, 7619/98, 7622/98 &
8374/98

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KALOL NAGARPALIKA

Versus

MOHAMMADKHAN CHANDKHAN

Appearance:

MR MI PATEL for Petitioner (absent)

MR PH PATHAK for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/06/1999

ORAL JUDGEMENT

These writ petitions involving common question of law and fact are proposed to be disposed of by a common judgement. Counter-affidavit has been filed in Special Civil Application No. 7619 of 1998 and request has been made by the learned counsel for the respondent to read this counter-affidavit in all the aforesaid Special Civil

Applications. None is present on behalf of the petitioner though the list has been revised four times. As such Shri P.H. Pathak, learned counsel for the respondent has been heard and the petitions and counter-affidavit have been examined.

The order dated 27.7.1998 in Miscellaneous Civil Application No. 4 of 1998 passed by the Labour Court is under challenge in these writ petitions.

Brief facts are that the respondent workmen were not paid overtime for the period 1976 to 1981. They filed recovery application No. 49 of 1982 and others. The recovery application was allowed by the Labour Court vide order dated 9.11.1994. Nothing was paid and as such the workers approached the Labour Court to issue recovery certificate. Recovery certificate was issued on 22.4.1997 to the Collector, Mehsana. The Deputy Collector who was appointed administrator of the Nagarpalika did not recover the amount under the recovery certificate, as a result of which, the respondents were constrained to approach this court by filing Special Civil Application No. 400 of 1998. The said Special Civil Application was allowed by this court with direction to the Collector to recover the amount of recovery certificate within three months. In spite of this order of this court, no action was taken by the Collector or Deputy Collector, who was the administrator of the Nagarpalika. As such, contempt application was moved by the workers. Thereafter, the present petition was filed by the petitioner.

It further appears from the record that the contention of the petitioner in earlier Misc. Application No. 6 of 1997 was that the order passed on recovery application was ex-parte. After examining the material, the Labour Court found that the earlier order was not ex-parte but it was passed after hearing both the sides and as such Misc. Application No. 6 of 1996 was rejected. No action was taken by the petitioner challenging the order passed in Misc. Application No. 6 of 1997. The petitioner kept waiting and moved another Misc. Application No. 4 of 1998 before the Labour Court. The Labour Court through a detailed order rejected this application reiterating its earlier stand that the previous order was not ex-parte and no action was taken in challenging the order passed earlier. It is therefore this order which has been challenged in the instant case on additional ground.

The learned counsel for the respondent has

rightly argued that the additional ground involving question of fact cannot be permitted to be agitated for the first time in these writ petitions. He has argued that the additional point was not taken nor raised before the Labour Court and hence this court cannot decide the disputed question of fact for the first time in these writ petitions. This submission is in accordance with law and has to be accepted. Consequently, new points which have been urged and raised in these writ petitions by the petitioner cannot be entertained.

So far as the legality of the order passed in Misc. Application No. 4 of 1998 is concerned, it is perfectly in accordance with law. Since the earlier order which was passed on merit after hearing both the sides, was not challenged and it was unsuccessfully challenged on ground of its being ex-parte the impugned order cannot be said to be illegal or contrary to law. What transpires from the chequered history of the case is that the attempt of the petitioner has been not to permit the execution of recovery certificate, may be in collusion with the District Collector or the Administrator of the Nagarpalika. It also appears from the record that even the order of this court directing recovery within three months was very lightly taken up and no serious effort was made by the Collector to make recovery within the time limit fixed by this court.

After carefully examining the impugned order dated 27.7.1998 passed by the Labour Court in Misc. Application No. 4 of 1998, I do not find any illegality thereunder. Consequently, I do not find any merit in these writ petitions which are hereby dismissed. Interim order dated 6.4.1998 is hereby vacated.

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